

HENRY POWLES ET AL. }  
 VS. }  
 JOSEPH DILLEY ET AL. } MARCH TERM, 1849.

[UNDUE PREFERENCE—INSOLVENT SYSTEM—JURISDICTION.]

To render an assignment valid under the 13th of Elizabeth, it is not enough to show that it was made for a valuable consideration, for that alone is not sufficient; it must also be *bona fide*.

It is well established that by the common law, a debtor may secure one creditor to the exclusion of others, either by payment, or a *bona fide* transfer of his property.

The transfer to a favored creditor, to be void under our insolvent system, must be made with a view, or under an expectation, of taking the benefit of the insolvent laws, and also with intent thereby to give him an undue and improper preference—both intents must be found to exist, or the transfer will not be disturbed.

The intent may be deduced as in other cases from facts and circumstances, but these must be such, as by fair inference will bring the mind to the conclusion that the unlawful intent existed.

The circumstances of this case distinguished from those of *Dulaney vs. Hoffman*, 7 *Gill and Johns.*, 107.

The title to property or claims transferred, or conveyed to a favored creditor, contrary to the provisions of the insolvent system, is, by the act of 1812, ch. 77, expressly vested in the trustee of the insolvent, and he alone is competent to sue for its recovery for the benefit of the creditors generally.

The Chancery Court has no jurisdiction over the subject of the appointment of insolvent trustees; this is a power confided exclusively in the courts of law, over which, in the exercise of this authority, this court can exercise no power of revision or control.

Under some circumstances this court may exercise an ancillary jurisdiction, and interpose its authority for the prevention of injury, until the proper court can inquire into the subject and apply the appropriate remedy.

But after the courts of law have acted by the appointment of a trustee, the Chancery Court cannot, upon allegations that they have appointed an improper person, or taken insufficient security, set aside such appointment, and take upon itself the administration of the estate of the insolvent, by an officer of its own.

[The history of the various proceedings in this case, as well as the facts upon which the decree is founded, are so clearly set forth in the opinion of the Chancellor, as to require no further statement.]